

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:99-CR-00049-F-1

No. 7:03-CV-00024-F

CLAUDE WENDELL BELLAMY,                     )  
  Petitioner,                     )  
  )  
  v.                                     )  
  )  
UNITED STATES OF AMERICA,                    )  
  Respondent.                    )

ORDER

This matter is before the court on Claude Wendell Bellamy's Motion to Dismiss [DE-413]. In his motion, Bellamy argues that this court should dismiss his indictment pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

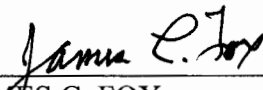
The relief Bellamy is seeking is identical to the relief he could obtain through a successful § 2255, and for this reason, the court will treat Bellamy's Motion to Dismiss as a motion brought pursuant to 28 U.S.C. § 2255. *See United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003) (holding that "a motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application.") Bellamy previously filed a § 2255 motion that was addressed on the merits. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Bellamy has not provided any evidence that he has secured authorization from the Fourth Circuit Court of Appeals to file a successive § 2255; thus, this court is without jurisdiction to consider the merits of the present successive § 2255 motion.

In light of the foregoing, Bellamy's Motion to Dismiss [DE-413] is DISMISSED. The

court finds that Bellamy has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the 16<sup>'</sup> day of September, 2014.

  
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JAMES C. FOX  
Senior United States District Judge